

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

CLOSED

IMMUNOTEC, INC.,

Plaintiff,

v.

LRM PACKAGING, INC.,

Defendant.

Civil Action No.: 2:09-CV-04109
(GEB) (MCA)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, plaintiff Immunotec, Inc. ("Immunotec"), commenced the above captioned action (the "Action") against defendant LRM Packaging, Inc. ("LRM"), for breach of contract, negligence, breach of implied warranty of merchantability, strict liability in tort and failure to warn; and

WHEREAS, LRM filed an answer to the complaint filed by Immunotec; and

WHEREAS, all parties desire to settle the Action without the necessity of further proceedings; now, therefore

IT IS HEREBY STIPULATED AND AGREED, by and among Immunotec and LRM, and their respective counsel, that the Action be, and the same hereby is, settled upon the following terms and conditions:

1. LRM acknowledges Immunotec's claim for damages in the amount of \$259,588.22.
2. In settlement of the claim set forth in paragraph 1 above, LRM agrees to pay, and Immunotec agrees to accept, the sum of \$250,000.00 (the "Settlement Amount"), which shall be

paid in accordance with paragraphs 3 and 4 below; provided, however, that it is understood and agreed by LRM that (a) Immunotec's agreement to accept the Settlement Amount is expressly conditioned upon LRM's compliance with each and every term and condition set forth in this Stipulation and John A. Natali, Sr.'s execution and delivery of a personal guaranty of the Initial Payment defined below and (b) LRM's failure to comply with any of the provisions of this Stipulation shall constitute an event of default as described in paragraph 5 below, and in that event LRM will be liable for all amounts set forth in paragraph 5 below.

3. The Settlement Amount shall be paid in two stages as follows: the initial payment ("Initial Payment") shall be in the amount of \$100,000 to be paid in two installments of \$50,000.00 each and the first installment shall be due on or before September 24, 2010 and the next payment shall be in the amount of \$50,000.00 and shall be due on or before November 24, 2010. The final payment of \$150,000.00 ("Final Payment") shall be paid in equal quarterly installments of \$12,500.00 commencing on October 1, 2011 and continuing until the total Settlement Amount has been paid and the debt satisfied.

4. The payments shall be made by certified or bank check made payable to the order of Immunotec, Inc. and remitted by overnight mail, next day delivery to Immunotec, Inc., Attn: James A. Northrop, President, 300 Joseph Carrier, Vaudreuil-Dorion, Quebec, Canada J7V 5v5.

5. In the event LRM fails to timely make any payment or otherwise fails to comply with each and every term and condition agreed to and required by this Stipulation then, upon written Notice of Default from Immunotec or its counsel sent by e-mail, fax, personal delivery (or by overnight mail) to LRM or its counsel and the failure of LRM to cure the default within three (3) business days of LRM's receipt of the Notice, Immunotec shall have the right, at their sole option

and discretion, to enter a default judgment against LRM for: (a) the full amount of the claim set forth in paragraph 1 of this Stipulation, less any amounts paid in accordance with paragraphs 3 and 4 above; and (b) all attorneys' fees and costs incurred by Immunotec from commencement of the Action up to and including the date of entry of a default judgment by the Court. The exercise of this right by Immunotec shall not waive, hinder or otherwise interfere with the exercise of any other right or option it may have in this regard including, but not limited to, pursuing its rights in connection with the personal guaranty executed and delivered by John A. Natali, Sr. as security for payment of the Initial Payment.

6. In the event LRM becomes the subject of a sale, merger, consolidation, change in control, reorganization or other similar organizational transaction or event, any remaining balance shall become due immediately and payment in full remitted to Immunotec on or before consummation of the transaction. Notice of such event shall be made in accordance with paragraph 7 herein within three business days of the decision to engage in the transaction. However, if the resulting company shall be able to demonstrate a net worth at least equal to that of LRM immediately prior to the transaction, and agrees to and does execute a writing assuming the obligation, then the remaining payments of the Final Payment shall not be accelerated.

7. Any and all notices or other communications required or permitted to be given under any of the provisions of this Stipulation shall be sufficient if in writing and shall be deemed to have been duly given upon the e-mailing and faxing thereof, or upon the mailing thereof by overnight mail, addressed to the parties at the addresses set forth below (or at such other address as any party may specify by notice to all other parties given as aforesaid):

For Immunotec: Michael F. Fitzgerald, Esq.
410 Park Avenue - Ste. 1530
New York, New York 10022
212 939-7281
212 751-3500 (f)
Mfitzjustice@aol.com

For LRM: Scarinci Hollenbeck LLC
Att: Mark K. Follender, Esq.
1100 Valley Brook Avenue
PO Box 790
Lyndhurst, New Jersey 07071-0790
201 896-4100
201 896-8660
www.scarincihollenbeck.com

8. This Stipulation shall be binding upon Immunotec and LRM, their respective administrators, subsidiaries, affiliates, successors and assigns.

9. This Stipulation supersedes all prior discussions between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. No provision of this Stipulation shall be modified, amended, extended, discharged, terminated or waived except by a writing specifically referring to this Stipulation and Order of Settlement and Dismissal and signed by all of the parties hereto and so ordered by the Court.

10. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall operate or be construed as a waiver of any subsequent breach or default of the same or similar nature.

11. Subject to the approval of this Court, the Court shall retain jurisdiction over the Action for the purpose of enforcing this Stipulation and Order of Settlement and Dismissal in the event of a default or failure by LRM of any payment, term or condition agreed to and required by

this Stipulation.

12. Each party to this Stipulation hereby acknowledges, represents and warrants that they are authorized to enter into, execute, deliver, perform and implement this Stipulation, and agrees to indemnify and hold harmless each other party from all sums which may become due, including costs and attorneys' fees, as a result of this representation or any other representation set forth herein being false or inaccurate.

13. No provision within this Stipulation shall prohibit LRM from prepaying its indebtedness to Immunotec, and LRM shall have the right to prepay without penalty.

14. Except as set forth herein, the Plaintiff on the one hand and the Defendant on the other do hereby release, waive and give up any and all claims or causes of action the one may have against the other for any and all acts whether or not arising from matters which may have been brought or alleged within the Complaint or otherwise and do specifically release and bar the bringing of any claims whether known or unknown and based on facts in existence from the beginning of the world to the date hereof.

**SIGNATURE PAGE OF STIPULATION AND ORDER OF SETTLEMENT AND
DISMISSAL FOR IMMUNOTEC VS LRM PACKAGING.**

Dated: September 23, 2010.

MICHAEL F. FITZGERALD, ESQUIRE
Attorney for Plaintiff

By: 

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212 751-3500 (f)
Mfitzjustice@aol.com

IMMUNOTEC, INC.

By: 

James A. Northrop, President

Scarinci Hollenbeck LLC
Attorneys for Defendant

By: 

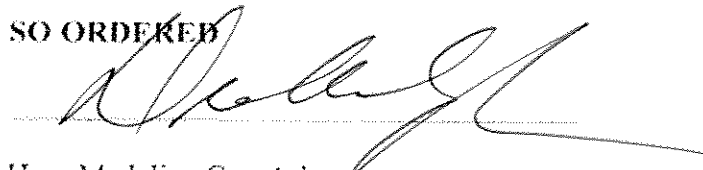
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PO Box 790
Lyndhurst, New Jersey 07071-0790
201 896-4100
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www.scarincihollenbeck.com

LRM PACKAGING, INC.

By: 

John A. Natali, Jr., President

SO ORDERED


~~Hon. Madeline Cox Arleo~~
~~United States Magistrate Judge~~

10/21/10
Dennis M. Cavanaugh, Judge
U.S. District Court